UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1460
30 October 1995

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-fifth session

SUMMARY RECORD OF THE 1460th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 25 October 1995, at 3 p.m.

Chairman: Mr. BAN

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GE.95-19207 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Consideration of a draft general comment relating to article 25 of the Covenant (continued) (CCPR/C/53/CRP.1)

Paragraph 19

1. Ms. EVATT, after registering her concern about the time lost through the late start of the meeting, invited the Committee to consider paragraph 19 of the recommendation by the Working Group (CCPR/C/53/CRP.1), which read:

> "Although the Covenant does not impose any particular electoral system, the vote of one citizen should, within the framework of each State's electoral system, be equal to the vote of another. Where the whole voting population as such is divided into electoral districts, there should be reasonable equality in the numbers of voters in each district; district boundaries should not be drawn in such a way as to skew the distribution of voters in a way which discriminates against any group of voters. Affirmative measures may be justified to ensure representation of minorities or the equal participation of women in the conduct of public affairs. However, any such measures should be compatible with article 25 and the principle of equal suffrage."

2. The paragraph attempted to deal with the concept of equal suffrage. The first sentence stated the general principle of equality of votes in a way which would apply to all electoral systems. The second sentence was intended as an anti-gerrymandering statement. Its first part, which referred to the division of all voters in a State into electoral districts, each of which would return one or more members, was not intended to apply to elections of senators or of representatives of elements of a federation. Referring to the second part of the second sentence, which elaborated a different aspect of the same idea, she proposed that the word "unreasonably" should be inserted between the words "which" and "discriminates". The remainder of the paragraph dealt with measures taken in some situations to ensure better representation of minority groups, and the intention was to indicate that while such measures should not necessarily be permanent or long term, they did exist in some countries and ought to be encouraged.

3. Mr. POCAR questioned the words "reasonable equality" in the first part of the second sentence. It was sometimes difficult, for geographical or other reasons, to ensure that one electoral district had the same number of voters as another. The proportion of voters to candidates might be a better criterion. The second part of the sentence was, in his view, satisfactory as it stood, although the word "skew" might perhaps be replaced by "distort". He was not, however, in favour of the addition of the word "unreasonably" proposed by Ms. Evatt, as it implied that discrimination could be reasonable in some circumstances. Recalling that the Committee's general comment on article 26 gave a definition of discrimination, he remarked that it might be useful to check the language of paragraph 19 against that text.

4. Mr. BRUNI CELLI observed that, where the voting population was divided into electoral districts, the uninominal voting system did not normally favour equitable representation of minorities. Referring to the third sentence of paragraph 19, he asked why "or" had been preferred to "and" in connection with the representation of minorities and the equal participation of women. Lastly, he remarked that the reference to the conduct of public affairs in the same sentence seemed out of place in a paragraph devoted to voting systems.

5. Mr. KLEIN said that measures taken to ensure representation of minorities were different from those taken to ensure the equal participation of women in the conduct of public affairs and should be referred to in a separate sentence. With regard to the last sentence of paragraph 19, he did not see how affirmative action in favour of minorities, justifiable as it was in some circumstances, could be compatible with article 25 and the principle of equal suffrage. As to affirmative measures in favour of women, he was not sure what kind of measures the drafters of the paragraph had in mind and would appreciate an explanation of the underlying idea.

6. Mr. FRANCIS also considered that the third sentence of paragraph 19 required closer examination in the light of the principle of equal suffrage set forth in article 25 (b) and reaffirmed at the end of paragraph 19. With regard to the first part of the second sentence, he felt that the notion of "reasonable equality" should not be carried too far in the context of the division of the voting population into electoral districts; in many countries, constituencies in metropolitan areas tended to be much larger than those in the countryside.

7. Taking up the point about uninominal voting made by Mr. Bruni Celli, he remarked that one way of ensuring more equitable representation of women might be for the political parties to agree among themselves that certain constituencies should be represented by women.

8. Mr. BHAGWATI, referring to the second sentence, agreed with Mr. Pocar that the proportion of voters to candidates would be a better criterion of equality than the numbers of voters in each district. As to the last sentence, he failed to see the difficulty referred to by Mr. Klein. Affirmative measures could be perfectly compatible with article 25 and the principle of equal suffrage; for example, a particular seat could be reserved for a candidate representing a minority community and everyone in the constituency concerned could vote equally for that candidate. That practice, which maintained the principle of equal suffrage, was widespread in India. Similarly, certain seats could be reserved for women candidates.

9. Mr. ANDO said that the issue raised in the first part of the second sentence was a sensitive one; it was not always easy to say what constituted "reasonable equality" where the number of voters in an electoral district was concerned. On the question of affirmative measures, he accepted the point just made by Mr. Bhagwati but thought that the issues of representation of minorities and equal participation of women in public affairs should be treated separately and with due caution.

10. Mr. EL SHAFEI said that he shared Mr. Pocar's concern about the first part of the second sentence. In his view, it might be best to drop that part of the sentence altogether. As to the second part of the second sentence, he had no experience of the situation referred to and would appreciate some clarification. Lastly, while agreeing that affirmative action could be justified in some cases, he did not think that a paragraph dealing with electoral systems and procedures was the appropriate place for raising the issue.

11. The CHAIRMAN, speaking as a member of the Committee, said that he deprecated the reference to discrimination in the second part of the second sentence and would prefer a wording such as "distort the distribution of voters in a way which amounts to unreasonable inequality in the votes cast".

12. Mr. BUERGENTHAL agreed that it would be best to delete the first part of the second sentence. In view of the point raised by Mr. Klein, he also thought that the last sentence of the paragraph ought to be deleted.

13. Mr. POCAR agreed with the suggestion that the third sentence should be split into two separate sentences, one dealing with the representation of minorities and the other with that of women. With regard to the point raised by Mr. Klein, he said that affirmative measures to ensure equal participation of women in the conduct of public affairs could take the form of stipulating that a certain percentage of candidates must be women or of reserving a certain number of seats for women candidates. Such measures were not incompatible with the principle of equal suffrage.

14. Mr. KLEIN, clarifying his earlier intervention, said that he understood equal suffrage to mean two separate things, namely, that each vote was counted equally and that each vote had equal weight. If some seats were reserved for a particular minority, the votes were still counted equally but no longer had equal weight in that a smaller number of votes was needed to elect the candidate. The principle of equal suffrage was thus infringed. Exceptions to the principle were admissible but it must be recognized that in such cases the principle had not been complied with. He was not at all opposed to affirmative measures to ensure representation of minorities, but he persisted in considering it illogical to say that such measures should be compatible with article 25 and the principle of equal suffrage. As to the question of affirmative measures in favour of women, he was prepared to believe that arrangements such as those described by Mr. Pocar existed in some countries but doubted whether they were actually prescribed by law.

15. Mr. FRANCIS said he was convinced that the issue raised in the last sentence should not be linked to the plight of minorities because, in any event, those groups were covered by the principle of equal suffrage under article 25 of the Covenant. The treatment of under-representation according to the principle of equal suffrage could not be applied to the widely prevailing situation where women were not adequately represented in Parliament. Affirmative action was necessary but not to the same extent as for minorities. One solution to getting more women into Parliament was to arrive at an agreement between the political parties that certain

constituencies would be represented by women and therefore only women would run as candidates. In his view, the representation of women in public affairs should be kept separate from the situation facing minorities.

16. Mr. BHAGWATI agreed that the second sentence should be deleted because it had given rise to differences of opinion within the Committee. He did not mind if the two issues, i.e. representation of minorities and the equal representation of women, were separated, but he did not see why the last sentence should be deleted. The principle of equal suffrage was a very sound one and should not be sacrificed. If the representation of minorities could be achieved in accordance with that principle, it should be pursued.

17. Mr. PRADO VALLEJO considered that the paragraph would be more complete if it promoted the general principles of the equality of voters, equal suffrage and the concept of non-discrimination on any grounds, as provided for in the Covenant. Another paragraph could be devoted to exceptional circumstances. In the case under discussion, those exceptional circumstances pertained to minorities and women. Both groups were in need of special assistance because they suffered certain disadvantages in representation. The paragraph should not be too detailed as far as distribution according to districts was concerned because countries had different electoral systems. The paragraph should, however, be very clear on the issues of political equality and non-discrimination and provide for exceptions to be made in the case of women and minorities.

18. Ms. EVATT said that there appeared to be a consensus in favour of the first sentence. As anticipated, the second sentence had caused much controversy because of differences in voting systems and forms of representation. The first part of the second sentence referred to the weight of votes and was intended to avoid the kind of situation where a group of 50,000 electors could be represented by one person and a group of 20,000 could also be represented by one person. In such a situation the weight of each vote was obviously affected. One possibility was to urge States to ensure reasonable proportionality between the number of voters and elected representatives, but such a statement would be too broad because it would exclude certain specific situations that could arise. She had no option but to withdraw that part of the sentence in the absence of an alternative. In the light of members' comments, the second part of the second sentence would be amended to read "boundaries should not be drawn in such a way as to distort the distribution of voters in a way which denies equality to any group of voters".

19. It might be appropriate to endorse the suggestion that the question of "minorities" should be dealt with in a separate paragraph. It had also been suggested that the third sentence should read: "Affirmative measures should also be applied to ensure the equal participation of women ...". She suggested the addition of "... in elected bodies, and until the goal of equality is achieved. However, such measures should be compatible with equality principles".

20. Mr. ANDO said that whereas the participation of women was based on numbers, most societies being made up of equal numbers of men and women, essential differences in numbers existed in the case of minorities. Although sexual inequality might be solved through affirmative action, that was not the case with minorities. That point should be made clear in the Committee's recommendation.

21. Mr. BRUNI CELLI said that the term "minority" as implied by article 25 of the Covenant had two distinct meanings: minorities as described in article 27 and political minorities resulting from an electoral process. The first group of minorities, "ethnic, religious or linguistic", were specific minorities. Political minorities, which by definition received fewer votes than the majority, were usually guaranteed a minimum degree of representation through mathematical calculations and the electoral system. He did not know whether Ms. Evatt had both concepts of minority in mind or only the one referred to in article 27. There was no doubt that the achievement of fair and equal representation depended on the consideration of both concepts.

22. Mr. LALLAH associated himself with the observations made by Mr. Bruni Celli. "Minority" as used in article 27 of the Covenant did not relate to representation. There was a need for absolute equality, and so great care must be exercised in specifying the concept of minority intended. Article 25 did not give minorities the right to be represented because their individual members already had that right.

23. There appeared to be some inconsistency in the third sentence proposed by Ms. Evatt. The phrase "until the goal of equality is achieved" could be interpreted as suspending enjoyment of the equality provided for under article 25. The Committee was assuming that the situation was one of inequality, so how could it say "until the goal of equality is achieved" and at the same time apply equality provisions to that concept? It was very important to remain consistent with the provisions of article 25 in order to avoid the aberrations that had been created in some systems of government.

24. Mr. FRANCIS suggested that the first sentence should affirm the principle of equal suffrage by saying "Although the Covenant does not impose any particular electoral system, it is predicated on the principle of one citizen, one vote. That principle was undeniable, as embodied in article 25, subparagraph (b)."

25. Mr. BUERGENTHAL supported Mr. Lallah's comments on the last two sentences, which implied that there was an almost permanent exception to article 25. If a sentence relating to women was included, it should not say anything about article 25 and equal suffrage because both were implicit in the temporary character of the exception made for affirmative action.

26. Ms. MEDINA QUIROGA agreed with Mr. Lallah and Mr. Buergenthal. When she had read the paragraph in its original form, she had understood that the reasonable participation of minorities in a political sense was to be achieved by the second sentence, which the Committee had subsequently deleted. She wondered why that deletion was necessary and why the Committee had not tried

to convey its message in such a way that political majorities could not exclude the participation of minorities. Her interpretation of affirmative measures covered the minorities mentioned in article 27 of the Covenant.

27. Mr. PRADO VALLEJO said that Mr. Lallah's point was valid and confirmed his view that paragraph 19 should be divided into two separate sections. He also considered that political minorities were covered by article 25 and not article 27. The two sections should deal with (a) the general principles of equality and non-discrimination, as provided for in the Covenant, and (b) exceptions to be made in the case of women.

28. Mr. KLEIN endorsed Ms. Evatt's proposals. Taking up the points made by Mr. Lallah, he said article 27 of the Covenant did not call for the political representation of minorities. However, there was a general trend in the development of minority law whereby States were encouraged to give minorities a guaranteed number of seats in parliament. If that were not the case, those groups would never have genuine representation in the political bodies concerned. Such provisions were not demanded by article 27, but neither were they excluded by either article 27 or article 25 under the principle of equal suffrage. The Committee should therefore take that desirable development into account.

29. The CHAIRMAN said that since Mr. Lallah had raised the question of minority problems under articles 25 and 27, he wished to remind the Committee of the complexity of the issue and the situation which had arisen when the Committee had considered the initial report of Slovenia. That State had allocated seats to its Hungarian and Italian minorities and the Committee had had to determine whether the large number of other minorities had been discriminated against.

30. Ms. EVATT agreed with Mr. Buergenthal's remarks about the need for measures to ensure the equal participation of women and concurred that there was no need to qualify that comment with a reference to article 25 or equal suffrage. References to minorities in the text were intended to refer to indigenous and other minorities, as described in article 27, and not to political minorities. She agreed entirely with Ms. Medina Quiroga, who had said political systems should not exclude groups from participation, but she did not know how to phrase that idea in the recommendation. The reference to district boundaries covered the idea to some extent but not entirely. If the Committee reached a consensus on the subject, it should endorse the view that the Covenant required that States should ensure the representation of political minorities. Paragraph 20 asked States to inform the Committee how they dealt with that issue in their respective electoral systems. Although it was not prescriptive, the request at least alerted States to the existence of such an issue. The paragraph was drafted with the intention of covering political minorities. Reference could also be made to indigenous and other minorities because indigenous groups often played a special role.

31. She accepted Mr. Prado Vallejo's suggestion to split the first sentence into two. She agreed with Mr. Francis that the Covenant established the principle of one person one vote, but the first sentence of the paragraph in its original form was trying to say more than that: not only should there be one vote for each person, but votes should have equal weight.

32. Mr. PRADO VALLEJO said that if the notion of indigenous and racial minorities was introduced into paragraph 19, that of religious and linguistic minorities would have to be included as well. In Bolivia, the majority was indigenous, but whites ran the Government; the indigenous inhabitants enjoyed the right to vote, but did not use it. What, in fact, constituted a minority? That matter was too complex to be addressed in the current context.

33. Mr. FRANCIS said that the first sentence did not, in his view, do justice to the terms of article 25 (b), which undeniably meant one man, one vote. It was appropriate to raise the issue of minorities in a discussion of political constituencies. A district boundary which was drawn through the middle of a minority community could effectively deny that population political representation; it was important to stipulate that in such cases boundaries should be delineated so that a minority group could be duly represented in a legislative body. That problem did not, incidentally, obtain in Jamaica; all Jamaicans voted, regardless of ethnic origin. Finally, he had been intrigued to learn that Hungary reserved seats in the National Assembly for small minority groups.

34. Mr. LALLAH said that, as the question of political minorities had been addressed in paragraph 13, it might seem overly fastidious to include that notion in paragraph 19 as well. In any event, the will of the electorate must prevail: if an electorate did not wish to accord political representation to a minority, nothing the Committee could say would help. In Mauritius, all the seats in Parliament had on one occasion been won by a single political party, but human nature being what it was, the party had subsequently split in two. It was unwise to insist that a State must provide representation to a political minority. The European Court of Human Rights in Luxembourg had recently determined, in a case originating in Germany, that affirmative action legislation which accorded preference to women over men was incompatible with the terms of the European Convention on Human Rights. Affirmative action legislation could appropriately be enacted in such areas as education, as had been done for the benefit of blacks in the United States. But if it gave preference to one person at the expense of another who was more deserving, the principle of equality was jeopardized. Finally, since general comments would be read not only by States parties but also by scholars and academics, the Committee should as far as possible strive for consistency.

35. Ms. MEDINA QUIROGA said that while paragraph 13 dealt with the right to be elected to public office, paragraph 19 dealt with the organization of an election. States were indeed known to set up electoral systems that did not reflect the will of the people. It was her view that the Committee should advise States parties that their electoral arrangements too should be compatible with the terms of article 25; she had not intended to suggest that the Committee should instruct States to reserve seats for minority groups. If a consensus could not be reached, she would not press her point.

36. Mr. BRUNI CELLI said that one of the greatest weaknesses of the Covenant was an overly neutral and deliberately vague presentation of the problem under consideration. It had in fact been the treatment by a State of certain minority sectors that had contributed to an increase in conflict, which had in turn led to the outbreak of the Second World War. The matter of the political representation of ethnic minorities and nationalities was far too serious to

be set aside by the Committee for reasons of convenience - especially in the light of circumstances now prevailing in Europe. It would have to be considered thoroughly, whether in that general comment or in a subsequent one. In those countries where minorities were not represented in proportion to their numbers, the tendency was to seek such an approach. Under the British electoral system, for example, there existed no mechanism whereby the votes of a minority population from one district could be linked with those of another. Germany, by contrast, had instituted a unique system for combining the votes of members of minority communities to achieve proportional representation. In analysing article 25, the Committee must somewhere broach that fundamental issue. One sentence in paragraph 20 - "Reports should ... explain how the different political elements supported by electors are reflected in the elected representatives of citizens" - seemed an attempt to come to terms with the question of the proportional representation of minorities. The sentence was, however, excessively vague.

37. The CHAIRMAN suggested that the issue should be set aside provisionally if no member had a concrete proposal to offer.

38. Mr. BUERGENTHAL said it would be worthwhile to consider the case of a country whose electoral system included affirmative action provisions for certain minorities. Would the Committee take the position that a State party was not entitled to enact such provisions? If the purpose of the general comment was indeed to provide guidance, that issue should be raised somewhere. The Committee could appropriately state that affirmative action legislation might be compatible with the terms of article 25 under certain circumstances, but in his view it would be improper to bar such legislation.

39. Mr. KRETZMER said that he was indeed sympathetic to the views expressed by Mr. Bruni Celli concerning minorities. Perhaps through common-law bias, he was tempted to maintain that decisions should not be made in general cases if they could be left to specific cases. He therefore supported Ms. Evatt's proposal and favoured omitting the reference to affirmative action, an approach which would avoid either requiring that affirmative action should be used or declaring that its use was unacceptable. If the Committee opted, on the other hand, for Mr. Buergenthal's formula, it would still have to both examine the nature of those circumstances and determine when affirmative action should or should not be employed.

40. Ms. EVATT said that she agreed with the views expressed by Mr. Buergenthal and Mr. Kretzmer. In response to the point made by Ms. Medina Quiroga, she proposed that the following sentence, or wording to similar effect, might be added after the first sentence (which the Committee had agreed to split in two): "Although the Covenant does not impose any particular electoral system, that system must be compatible with the right of electors to express freely their will."

41. Mr. LALLAH said that to omit mention of affirmative action in the general comment did not preclude its consideration at a subsequent time. He reminded the Committee that general comments, as originally conceived, were intended to draw on the experience of the Committee in its consideration of State reports and of communications under the Optional Protocol. The Committee had gone a step further in positing that general comments should also provide guidance.

He would prefer adhering to the original approach; a general comment was undeniably stronger when grounded in the Committee's jurisprudence. In fact, a number of general comments, among them Nos. 17 and 19, needed updating in the light of experience. Finally, although he would not oppose including the notion of affirmative action, he would want to be certain that reference to it would not create more problems than it would solve.

42. Mr. PRADO VALLEJO proposed that Ms. Evatt should be requested to redraft the paragraph, incorporating the remarks made by members of the Committee; it was not impossible that consensus could be reached on that paragraph during the course of the current session.

43. The CHAIRMAN endorsed Mr. Prado Vallejo's proposal: in spite of the impasse that had arisen, the Committee was near consensus.

44. Ms. EVATT said she would redraft paragraph 19, incorporating the points on which the Committee had agreed; she would also attach a footnote indicating that the matter of minorities had not been resolved. If any other member wished to attempt to formulate an approach to that problem, they should be encouraged to do so, but in her view, it was unlikely that agreement could be reached at the current session.

45. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to proceed as outlined by Ms. Evatt.

46. It was so decided.

Paragraph 20

47. Ms. EVATT invited the Committee to consider paragraph 20, which read:

> "State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections. Reports should describe the division and size of electoral districts and explain how the different political elements supported by electors are reflected in the elected representatives of citizens. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the electoral process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained."

48. The intent of paragraph 20 was to request States parties to describe what measures they had taken to implement article 25 (b). The second sentence, to which both she and Mr. Bruni Celli had earlier referred, constituted an effort to apprise States that the Committee was extremely interested in the design of their electoral systems and, in particular, in the question whether that design ensured that various political elements would be duly represented. That was the closest she had been able to come to incorporating the matter of political minorities into the text of the general comment.

49. Mr. KRETZMER said that the first sentence contained a bias in favour of a particular electoral system. He proposed that the text should instead stipulate that the report should describe the electoral system; in the case of a proportional representation system, it should describe how that system worked.

50. He disliked, and questioned the meaning of, the phrase "explain how the different political elements supported by electors are reflected in the elected representatives of citizens". It might perhaps be better to say "explain how different groups in the electorate are reflected in the elected representatives of citizens" or "... are reflected in the diversity of the elected representatives of citizens".

51. Ms. EVATT said that she had used the word "political" to distinguish those elements from such social elements as language and gender. The word could be dropped albeit with some loss of precision.

52. Mr. EL SHAFEI shared the view expressed by Mr. Kretzmer. It furthermore seemed excessive and impractical to require a State party to describe the division and size of its electoral districts. What purpose did that serve? Election reports were often voluminous. The sentence might simply ask how political elements or parties were reflected in the results of an election. He did not understand the meaning of either the phrase "political elements supported by electors" or "reflected in ... elected representatives". He hoped the second sentence could be clarified.

53. Mr. PRADO VALLEJO agreed that the Committee should not request States parties to describe the division and size of electoral districts, as such descriptions might unnecessarily encumber the reports. It would be useful to know whether proportional equity was ensured, however, and perhaps wording along those lines could be incorporated. In the third sentence the word "electoral" in the phrase "secrecy, security and validity of the electoral process" should be replaced by "voting".

54. Mr. BRUNI CELLI said the concerns about political minorities he had expressed in regard to paragraph 19 could be resolved through a small amendment to paragraph 20. In the second sentence, the phrase "how the different political elements supported by electors are reflected in the elected representatives of citizens" should be replaced by "how the will of the electors is reflected in the elected representatives of citizens and whether any provision has been made for ensuring proportional representation of minorities".

55. Mr. LALLAH said he understood the reasons for the objections raised by his colleagues but wished to remind them that paragraph 20 was intended to induce States parties to describe their electoral system in general. He would suggest that the phrase "and the nature of the electoral system, designed to ensure its genuineness and the free exercise of the will of the people" should be added at the end of the first sentence, and that the second sentence should begin "In particular, reports should also ...".

56. Ms. EVATT, summing up the discussion, said it had yielded a number of useful amendments. In the third sentence, the words "electoral process" would be replaced by "voting process". The words "and how the measures guarantee the free expression of the will of the electors" would be added at the end of the first sentence. The purpose of the second sentence was to ascertain the extent to which the number and political affiliation of the representatives elected by a community actually reflected the various political currents in that community. She would therefore suggest that the phrase "how the different political elements supported by electors" be replaced by "how the different political views of the community". That wording might meet Mr. Bruni Celli's concern, as it would require States to tell the Committee whether proportional representation existed or not.

57. She could also endorse the proposal to delete the phrase "describe the division and size of electoral districts and" because, as had been rightly pointed out, the Committee was merely asking for a description of the electoral system in general.

58. In response to a remark by Mr. El Shafei, she said the phrase "are reflected in the elected representatives of citizens" could be replaced by "are reflected in elected bodies".

Paragraph 21

59. The CHAIRMAN invited the Committee to consider paragraph 21, which read:

"(c) To have access, on general terms of equality, to public service in his country."

"21. Subparagraph (c) ensures to citizens the right and the opportunity to have access to offices of public service established by law, such as the civil service, the military, police and security services and other positions involving government appointment or employment. To ensure access on general terms of equality, the criteria for appointment and the processes for appointment, promotion and dismissal must be reasonable, objective and non-discriminatory. Basing the public service on merit and equal opportunity, and providing secure tenure, ensures its freedom from political interference or pressures. It is of particular importance to ensure that there is no discrimination on the ground of political opinion. If educational or other qualifications are imposed, they should be relevant to the duties of particular positions, but no one should have preference or suffer disadvantage on unreasonable or discriminatory grounds. State reports should describe the conditions for access to public service, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office."

60. Ms. EVATT said that paragraphs 21 to 23 took up the subject of article 25 (c), namely, access to public service. Paragraph 21 dealt with appointment, promotion and dismissal, paragraph 22 with affirmative measures, and paragraph 23 with the judiciary.

61. In the first sentence of paragraph 21, the meaning of "public service" was defined; the second sentence referred to criteria for appointment; and the third brought out the notion that merit and equal opportunity were essential as underpinnings for the independence of the public service. The fourth and fifth sentences spoke of the prohibition of discrimination on grounds of political opinion and the need for qualifications to be relevant to the job being filled. The sixth and final sentence asked States to describe in general terms the procedures for appointment, promotion and dismissal as they related to public service.

62. Mr. KLEIN said he strongly agreed with the sentiments expressed in the paragraph, especially in the third sentence. The fourth sentence, however, with its reference to "no discrimination on the ground of political opinion," raised some difficulties for him. If discrimination was understood as being of an unreasonable nature, he could accept the phrase. But some differentiation on grounds of political opinion was inevitable in appointments to public service in order to further the political objectives of a given Government.

63. Mr. BHAGWATI said every case of differentiation was not necessarily discrimination, but discrimination was always, by definition, unreasonable. He himself was more concerned about the reference to "government" appointment or employment in the first sentence, for that seemed to rule out appointment by a public-sector corporation or parastatal body.

64. Mr. KRETZMER endorsed Mr. Bhagwati's comments on the distinction between discrimination and differentiation but thought the fourth sentence might nevertheless be revised to take account of Mr. Klein's concern. A new version might read: "Except in cases of clear political appointment, political opinion should not be relevant to appointment to the public service." The final part of the fifth sentence ("but no one should have preference or suffer disadvantage on unreasonable or discriminatory grounds") should be deleted as being redundant.

65. Mr. POCAR reminded the Committee that it had adopted its own definition of non-discrimination in its general comment on that subject (CCPR/C/21/Rev.1/Add.1), paragraph 7 of which indicated that "the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference" based on various types of criteria. Paragraph 13 of the general comment stated that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". He would suggest that all uses in the draft now under consideration of the terms "reasonable", "objective" and "non-discriminatory" be checked for consistency with the general comment on non-discrimination, and drew particular attention to the phrase "reasonable, objective and non-discriminatory" in the second sentence and the words "unreasonable or discriminatory grounds" in the fifth sentence. He would suggest the deletion, in the first sentence, of the phrase "established by law" because administrative acts could also form the basis for public service, and he agreed with Mr. Bhagwati's comments on the use of the term "government" in that sentence.

66. Mr. BRUNI CELLI said the issue was not really whether a person's political opinion was a criterion for appointment: in fact, overtly political posts existed in many governmental systems. The sixth sentence referred to "access to public service", but it should not be construed to mean access to all jobs in public service. A distinction must be made between political appointments in the public service, which were made by the Government, and other positions that were filled by career civil servants, who were part of the administrative structure of the State.

67. Mr. FRANCIS said the first sentence made the very distinction referred to by Mr. Bruni Celli when it mentioned "offices of public service ... such as the civil service". The civil service was the mainstream of government administration, and its members had a very different status from that of political appointees who served as advisers, etc. For example, civil servants were expected to use objectivity in their work and to refrain from showing overt political bias. He endorsed the substance of the paragraph but had no objection to drafting changes meant to improve the wording.

68. Mr. LALLAH said he could not endorse the proposal to delete the phrase "established by law". That phrase was intended to refer to "the establishment", i.e. the public service, comprising the civil service, the military, police and security services. Since those services were indeed "established by law", everyone must have equal access to them, and their employees must be differentiated from more transient figures in the Government such as political advisers. On the other hand, there was no getting away from the reality that any political group that came to power needed policy advisers and people to implement that policy, and that politicians rewarded their supporters by giving them such posts. The appointment of public figures who were not part of the regular civil service was simply a fact of life.

69. Perhaps the first sentence could be revised to make it clear that the paragraph dealt with appointments, promotions and dismissals; he would also suggest the deletion of the phrase "and other positions involving government appointment or employment". Finally, he did not agree with Mr. Bhagwati that the text should be changed to accommodate a reference to parastatal bodies as such entities were not part of the public, civil service.

70. Mr. EL SHAFEI suggested that the reference in the fourth sentence to "discrimination on the ground of political opinion" should be revised to correspond to paragraph 13 of the general comment on non-discrimination, i.e. to indicate that differentiation and discrimination were two separate things.

71. Mr. BUERGENTHAL suggested that, since the phrase "civil service" was not understood in exactly the same way in all countries, the word "career" should be inserted before it. He agreed that the phrase "and other positions ... employment" should be deleted from the first sentence.

The meeting rose at 6 p.m.